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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



AFX, Inc.

Petitioner,

v.

Pacesetter, Inc.

Registrant.

11-05-2003

U.S. Patent & TMO/TM Mail Rept Dt. #22

Cancellation No.: 92041464

Mark: INTEGRITY AFX

Registration No. 2,515,322

Attorney's Reference: 40027-187127

**STIPULATED PROTECTIVE ORDER**

Each of the parties to this action recognizes that it may be necessary to disclose certain information relating to the subject matter of this action, but each wishes to ensure that such information shall not be used for any purpose other than preparation of this action and shall not be made public or be otherwise disseminated beyond the extent necessary for purposes of such action. Each of the parties represents that it has no intention to use any information obtained from another party for another purpose.

Accordingly, the parties agree that the following procedure shall be adopted for the protection, during settlement negotiations, discovery, and other pretrial proceedings in this action and at the trial, of confidential business information.

**DEFINITIONS**

The following definitions shall apply to this Order:

(a) "Confidential Information" shall mean and refer to any documents, testimony, responses to interrogatories or requests for admissions, or other information, in

whatever form or media, which the producing party designates as "confidential" at the time of their disclosure, whether such designation be in writing or otherwise of record, and which comprises, embodies, or summarizes matter which any party considers confidential and desires not to be made public, such as, by way of example and not limitation, trade secrets, customer lists, sales figures, advertising expenditures, profit information, confidential research, and commercial or financial information.

(b) "Qualified Person" shall mean and refer to outside counsel of record for the parties, including outside counsel's partners, associates, paralegals, stenographic and clerical employees, and independent contractors (including photocopying contractors), and shall include consultants and experts retained for purposes of this proceeding. "Qualified Person" shall also mean and refer to in-house counsel for Registrant and Petitioner's Legal Affairs Manager, who shall be qualified to review all Confidential Information except for the opposing parties' sales figures and client lists. Prior to being given access to Confidential Information, independent contractors, consultants, experts, Registrant's In-House Counsel and Petitioner's Legal Affairs Manager will be shown a copy of this Order and will agree, by signature, to be bound thereby in accordance with Exhibit A to this Order.

#### PROVISIONS GOVERNING CONFIDENTIAL INFORMATION

1. Confidential Information shall be and remain confidential, and shall not be disclosed in any fashion, nor be used for any purpose other than the analysis and preparation for trial of this action as provided for herein.

2. Confidential Information shall be retained by the parties' counsel and shall not be disclosed or made available to any person except a Qualified Person who has, if required above, read and agreed to the terms of this Order. Said Confidential Information

shall not be used by any Qualified Person, except solely for the purposes of litigation in this action and shall not be used for any other purpose whatsoever. The substance or content of Confidential Information, as well as copies, summaries, notes and memoranda relating thereto, shall not be disclosed to anyone other than a Qualified Person. If Confidential Information or summaries thereof have been entered into a computerized database, only Qualified Persons shall have access to the database.

3. Nothing in this Order shall preclude the disclosure by a party of documents or other information provided to that party by others without benefit of this Order nor shall anything in this Order preclude the disclosure by the parties of publicly available documents or information.

4. Whenever a document or thing produced by any party involves a disclosure of Confidential Information which the producing party wishes to be subject to this Protective Order, the producing party shall mark the same at the time it is produced to the other party with the legend "Confidential." Confidential Information consisting of "sales figures" and/or "client lists" shall be designated with the legend "Confidential/Client List" or "Confidential/Sales Figures." Any copy made of all or any portion of such document or thing or any abstract, summary, or memorandum embodying said Confidential Information shall likewise bear on its face the aforesaid legend. Documents inadvertently produced without the "Confidential" designation may be substituted by appropriately designated documents, provided that it will not be considered a violation of the Order if the prior undesignated documents have, prior to the substitution, been disclosed to others, but counsel will make every effort to have them returned.

5. Whenever Confidential Information is referred to or incorporated in, or if a document designated Confidential is submitted with or as an exhibit to, any motion or other paper filed in this action, the motion or other paper shall be filed under seal subject to further orders of the Trademark Trial and Appeal Board (hereinafter "the Board").

6. Whenever a deposition taken on behalf of any party hereto or testimony at the trial involves a disclosure of Confidential Information:

(a) The confidential portion of said deposition or testimony shall, at the designation of the party asserting confidentiality, be taken subject to the provisions of this Protective Order. Only Qualified Persons, including the court reporter and the witness, shall be present at such depositions during the confidential portion of such deposition. A designation shall be made on the record whenever possible, but a party may designate portions of the transcript of depositions as containing confidential information after transcription, as in the case of any other document or tangible thing, provided that written notice of such designation is given to all other parties within thirty (30) days after a transcript of said deposition is available. During the thirty-day period, counsel shall treat the entire transcript as if it had been designated "Confidential."

(b) The cover page and those portions of the original and all copies of deposition transcript and of trial testimony which contain Confidential Information shall bear the legend "Confidential" and, if filed with the Board, at least the confidential portion shall at the time of filing be sealed, identified as being "Confidential" and not opened except by order of the Board.

7. If, at the time of trial, counsel for any of the parties attempts to introduce into evidence or use in cross-examination any Confidential Information, whether as part of a

document or deposition testimony, counsel for either party may request the Board to preserve the confidentiality of that Confidential Information to the extent and by means the Board deems necessary and appropriate.

8. The designation of any document or information by any disclosing party as confidential shall not constitute evidence nor an admission that the document or information so designated is or is not in fact confidential or relevant to any issue in this case. Any party will have the right to oppose production of any information on any appropriate grounds. This Order shall be without prejudice to either party to bring before the Board at any time the question of whether any particular information is or is not in fact confidential or relevant to any issue of this case; upon such hearing the person asserting confidentiality or relevance shall have the burden of establishing the same. Any party claiming that information designated by the other party as confidential has been in the possession of the public prior to exposure or disclosure of such information through discovery herein shall have the burden of proving such public knowledge of such information. A failure of any party to challenge a claim of confidentiality shall not constitute acquiescence to such claim if a question of compliance with this stipulation is subsequently raised. Any party may apply to the Board for such modification of this Order as the Board may deem appropriate.

9. Upon the final determination of this action, counsel for the parties and all "Qualified Persons" shall destroy or return to the disclosing party's counsel, all documents containing Confidential Information, as well as any copies, summaries, notes, and memoranda related thereto unless the Board should order otherwise. In addition, if Confidential Information or summaries thereof have been entered into a computerized database, the database shall be purged and disclosing party's counsel provided with a

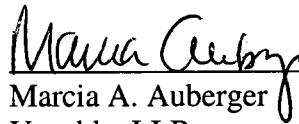
certification that all documents, copies, summaries, notes, memoranda, and database entries located on non-removable magnetic or optical media have been purged, destroyed, or returned unless the Board should order otherwise.

10. It is expressly understood by and between the parties that in producing Confidential Information in this proceeding, the disclosing party shall be relying upon the terms and conditions of this Order.

IT IS SO ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2003


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Member, Trademark Trial and Appeal Board

AGREED TO:

  
\_\_\_\_\_  
Marcia A. Auburger  
Venable, LLP  
1201 New York Avenue, N.W. - Suite 1000  
Washington, D.C. 20005-3917

Dated: November 5, 2003

Attorneys for Registrant

  
\_\_\_\_\_  
Michael L. Louie, Esq.  
Beyer Weaver & Thomas, LLP  
2030 Addison Street, 7<sup>th</sup> Flr.  
Berkeley, CA 94704

Dated: October 29, 2003

Attorneys for Petitioner

## EXHIBIT A

### STIPULATED PROTECTIVE ORDER

I have read the Stipulated Protective Order of record in the case of AFX, INC. v. PACESETTER, INC. in the Trademark Trial and Appeal Board. In consideration for the disclosure to me of information designated as confidential in this proceeding by Registrant, I agree to be bound by its terms.



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(Signature)

Name: Ross M. Carothers  
Address: 47929 Fremont Blvd.  
Fremont, CA 94538

Date: October 30, 2003